



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 20 2013

**By Electronic Mail and First Class Mail**

Central Valley Independent PAC and  
Ross Allen, in his official capacity as treasurer  
P.O. Box 416  
Coalinga, CA 93210

RE: MUR 6767  
Central Valley Independent PAC and  
Ross Allen, in his official capacity as  
treasurer

Dear Mr. Allen:

On June 17, 2013, the Federal Election Commission (the "Commission") notified you in your official capacity as treasurer of Central Valley Independent PAC (the "Committee"), of RR 13L-13 indicating that, in the normal course of carrying out its supervisory responsibilities, the Commission became aware of information suggesting that the Committee may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On December 17, 2013, the Commission opened MUR 6767 and found reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and (g)(1)(B), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

**We look forward to your response.**

On behalf of the Commission,

Ellen L. Weintraub

**Ellen L. Weintraub  
Chair**

**Enclosures**  
**Factual and Legal Analysis**

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Central Valley Independent PAC and MUR 6767  
4 Ross Allen, in his official capacity as treasurer  
5

6 **I. GENERATION OF MATTER**

7 The Reports Analysis Division ("RAD") referred Central Valley Independent PAC and  
8 Ross Allen, in his official capacity as treasurer (the "Committee") to the Office of General  
9 Counsel ("OGC") for failing to timely file a 24-Hour Report to support independent expenditures  
10 made on October 26, 2012, totaling \$166,391.00, which the Committee later disclosed on its  
11 2012 30 Post-General Report. *See* Memorandum from Patricia C. Orrock, Chief Compliance  
12 Officer, FEC, to Anthony Herman, General Counsel, FEC (June 3, 2013) ("Referral"). Based on  
13 the available information, the Commission has determined to open a matter under review  
14 ("MUR") in connection with RR 13L-13, and find reason to believe that the Committee violated  
15 2 U.S.C. §§ 434(b) and (g)(1)(B) by failing to timely disclose \$166,391 in independent  
16 expenditures to the Commission.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Factual Background**

19 The Committee is a multicandidate, independent expenditure-only committee that is not  
20 affiliated with any candidate or elected official. *See* Statement of Organization (Oct. 11, 2012).  
21 Ross Allen is the Committee's treasurer.

22 In late October 2012, the Committee made \$210,929 in independent expenditures for  
23 media buys opposing federal candidate James "Jim" Costa, the incumbent Democratic candidate  
24 for the House of Representatives in California's 16th Congressional district, and supporting

1 Republican candidate Brian Whelan.<sup>1</sup> The Committee timely filed 24-Hour Reports for  
2 independent expenditures made on October 23 and 24, 2012 totaling \$44,538, *see* 24-Hour  
3 Independent Expenditure Report (Oct. 24, 2012); *id.* (Oct. 25, 2012), but failed to timely file a  
4 24-Hour Report for additional independent expenditures made on October 26, 2012, totaling  
5 \$166,391.

6 On December 6, 2012, the Committee's attorney contacted the Reports Analysis Division  
7 analyst and inquired as to how it should handle its failure to file a 24-Hour Report for the  
8 \$166,391 in independent expenditures made on October 26, 2012. The analyst advised the  
9 Committee to file the 24-Hour Report as soon as possible, to be certain to disclose the  
10 independent expenditures in its 2012 30 Day Post-General Report, and to file a Miscellaneous  
11 Electronic Submission ("Form 99") to explain why the 24-Hour Report for the October 26, 2012  
12 independent expenditures had not been timely filed. *See* Referral at Attach. 3. On December 6,  
13 2012, the Committee filed one 24-Hour Report to disclose the \$166,391 in independent  
14 expenditures that were made on October 26, 2012, but not previously disclosed, and filed a 2012  
15 30 Day Post-General Report covering the period from October 18, 2012 through November 26,  
16 2012, which included a Schedule E that disclosed the independent expenditures made on October  
17 23, 24 and 26, 2012. *See* 2012 30 Day Post-General Report at 8-9 (Dec. 6, 2012).

18 On February 6, 2013, a Request for Additional Information ("RFAI") was sent to the  
19 Committee referencing the 2012 30 Day Post-General Report and the Committee's failure to

<sup>1</sup> Specifically, the Committee made one independent expenditure to SRCP Media, Inc. on October 23, 2012 for \$30,929 for a media buy opposing Jim Costa and supporting Brian Whelan, one independent expenditure to SRCP Media, Inc. on October 24, 2012 for \$13,609 for a media production opposing Jim Costa, and two independent expenditures to SRCP Media, Inc. on October 26, 2012 for \$166,062 and \$329 for a media buy opposing Jim Costa and supporting Brian Whelan and related shipping costs, respectively. *See* 2012 30 Day Post-General Report at 8-9.

1 timely file the required 24-Hour Report regarding the October 26, 2012 independent  
2 expenditures. Referral at 2.<sup>2</sup>

3 On March 13, 2013, the Committee filed a Form 99 in response to the RFAI. The Form  
4 99 stated, in part:

5 In this case, [Central Valley Independent PAC (CVI)] promptly and sua sponte  
6 reported this [independent expenditure (IE)] on a 24 hour report as soon as  
7 information that could require the report became available. Pursuant to the  
8 Commission's Statement of Policy Regarding Treasurers' Best Efforts from 2007  
9 (Notice 2007 13, 72 FR 31438), CVI used its best efforts and took all reasonable  
10 steps to expeditiously file this 24 hour IE report.

11  
12 CVI presently has minimal funds remaining in its account, and it is no longer  
13 soliciting contributions or making expenditures. It is currently in the process of  
14 terminating.

15  
16 Referral at 2.

17 After receiving a message from the RAD Analyst that the Committee might be referred  
18 for further action, the Committee's bookkeeper contacted RAD. See Referral at 3-4. The  
19 bookkeeper explained that the Committee had hired an attorney to assist with compliance who  
20 only informed the Committee of the requirement for the 24-Hour Report after the deadline for its  
21 filing. *Id.* The bookkeeper asked how she could submit an explanation to be placed on the  
22 public record. *Id.* The analyst informed the bookkeeper that the Committee could file a Form 99  
23 to clarify the public record if it so chose. *Id.*

24 On March 25, 2013, the Committee filed another Form 99 which stated, in full:

25  
26 We had a late 24 hour filing due to the fact that the attorney that we hired to fill  
27 out these reports did not advise us of the due dates and the requirements. He was  
28 advised to fill out the first form and he did and he was instructed to fill out the  
29 forms going forward. Instead he told us about the due date after it had passed.  
30

<sup>2</sup> The RFAI identified one independent expenditure, totaling \$166,062, for which the required 24-Hour Report had not been timely filed. *Id.* The Referral states that the RFAI inadvertently omitted a second independent expenditure totaling \$329.00 that should also have been included in the 24-Hour Report that the Committee failed to file. See Referral, Attach. at 2.

1 Referral at 4. RAD received no further communication from the Committee regarding this  
2 matter. *Id.*

3 On June 3, 2013 RAD referred the Committee to OGC for failing to timely file  
4 one 24-Hour Report to support two independent expenditures totaling \$166,391.00, which the  
5 Committee disclosed on its 2012 30 Post-General Report. *See* Referral. Upon receipt of the  
6 Referral, OGC notified the Committee about this matter on June 17, 2013. *See* Agency  
7 Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617  
8 (Aug. 4, 2009). We have not received a response to the notification.

9 **A. Legal Analysis**

10 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
11 treasurers to file reports of disbursements in accordance with the provisions of 2 U.S.C. § 434.  
12 2 U.S.C. § 434(b)(4); 11 C.F.R. § 104.3(b). The Act defines "independent expenditure" as an  
13 expenditure by a person expressly advocating the election or defeat of a clearly identified federal  
14 candidate that is not made in concert or cooperation with or at the request or suggestion of such  
15 candidate, the candidate's authorized political committee, or their agents, or a political party  
16 committee or its agents. 2 U.S.C. § 431(17).

17 Every political committee that makes independent expenditures must report those  
18 expenditures in its regularly scheduled disclosure reports in accordance with 11 C.F.R.  
19 § 104.3(b)(3)(vii). 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule  
20 E the name of a person who receives any disbursement during the reporting period in an  
21 aggregate amount or value in excess of \$200 within the calendar year in connection with an  
22 independent expenditure by the reporting committee. The report also must disclose the date,  
23 amount, and purpose of any such independent expenditure and include a statement that indicates

whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. 2 U.S.C. § 434(b)(6)(B)(iii); 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(a).<sup>3</sup>

In certain instances, a political committee is required to make additional disclosures of its independent expenditures prior to the disclosures on the committee's regularly scheduled reports.

A political committee that makes or contracts to make independent expenditures aggregating \$1,000 or more in connection with a given election after the 20th day, but more than 24 hours before the date of an election, is required to file a report describing the expenditures within 24 hours. 2 U.S.C. § 434(g)(1)(A); 11 C.F.R. § 104.4(c). These 24-Hour Reports must be filed within 24 hours "following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(c). A political committee must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. 2 U.S.C. § 434(g)(1)(B); 11 C.F.R. § 104.4(c).

As set forth in the Referral, the Committee did not comply with the Act's reporting requirements when it failed to timely file a 24-Hour Report to support \$166,391 in independent expenditures made on October 26, 2012, which the Committee disclosed on its 2012 30 Post-General Report. Therefore, the Commission finds reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and (g)(1)(B).

<sup>3</sup> Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id*